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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	117163.00028	6887
21324 7590 12/12/2007 HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076			EXAMINER THALER, MICHAEL H	
			ART UNIT 3731	PAPER NUMBER
			NOTIFICATION DATE 12/12/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

<b>Office Action Summary</b>	Application No. 09/974,777	Applicant(s) SCHALDACH ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29,30,47,48,65,73-75,77,86 and 87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>APPENDIX A AND B</u> .                 |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29-32,34,35,37-40,42,43,45-50,52,53,55-58,60,61,63-65 and 67-87.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 31,32,34,35,37-40,42,43,45, 46, 49, 50,52,53,55-58,60,61,63-65,67-72,76 and 78-85.

Claims 31, 32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55-58, 60, 61, 63-65, 67-72, 76 and 78-85 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 19, 2006.

Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29, 30, 47, 48, 65, 73-75, 77, 86 and 87 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the original disclosure for the limitation in claim 1, lines 12-16. The attached appendix A schematically represents an enlarged portion of figure 3 of applicant's disclosure. As seen in this figure, the line extending tangentially from the vertex of the V-shape is not essentially perpendicular to the longitudinal axis of the tubular body. This is because the upper strut shown in the appendix is not symmetrical to the lower strut about a horizontal line between the two struts.

Further, there is no basis in the original disclosure for the limitation in claim 73, lines 16-21. As shown in appendix A, the line bisecting the angle of the V-shape is not essentially perpendicular to the longitudinal axis of the tubular body.

Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29, 30, 47, 48, 65, 73-75, 77, 86 and 87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are confusing and inaccurate for the reasons set forth above. Further, as to claim 74, the V-shaped connecting bars have already been claimed in claim 73 as second connecting bars. Thus, "additionally comprising" in claim 74, is incorrect.

Claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47, 48, 86 and 87 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt (DE 19834956). Alt, as shown in the attached appendix B (which is based on the equivalent U.S. Patent 6,398,805 only because this figure is clearer than the equivalent figure in the foreign patent), discloses bar elements and connecting bars characterized that all of the first and second bar element portions of the first annular support portion extend in the

longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner (since they are all concave), and wherein all of the first and second bar element portions of the first annular support portion extend to an identical extent and in a non-offset manner in the longitudinal direction wherein and the first and second bar elements are entirely concave over the entire length of the bar element portion. The language in claim 1, lines 12-16 and claim 73, lines 16-21 is inaccurate as set forth above. As to claim 5, the bar element portions are inherently adapted to keep stresses below a plastic deformation limit upon being moved to the implantation location by being curved in a such a way.

Claims 12, 13, 15-18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645). Alt fails to disclose the direction of curvature of the bar element portions changing in the longitudinal direction of the stent. However, Hoefer teaches that the direction of curvature of the bar element portions should change in the longitudinal direction of the stent (as shown in figure 2 wherein the curvature alternates between concave and convex in the longitudinal direction of the stent). This arrangement has the apparent advantage of

increasing the flexibility of the stent in various directions. It would have been obvious to change the direction of curvature of the Alt bar element portions so that it too would have this advantage.

Claims 65, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319). As to claim 65, Alt fails to disclose the connecting bars engaging a central region of the bar element portions and being adapted to the curvature thereof. However, Kveen et al. teach that the connecting bars should be so constructed (e.g. connecting bar 1032 in figure 13). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so shape the Alt connecting bars so that it too would have this advantage. As to claim 73, Alt fails to disclose connecting bars that are substantially rectilinear. However, Kveen et al., in figure 9, teach that the connecting bars on one end of the bar element portions at 621, 623 should be so shaped (such that they are short and rectilinear) as indicated in col. 11, line 28-31, apparently in order to obtain the advantage of improving the supporting ability of the stent. It would have been obvious to so shape the Alt connecting bars

on one end of the bar element portions so that it too would have this advantage.

Claims 75 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319) as applied to claim 73 above, and further in view of Hoefer (DE 19840645) for the reasons set forth in two paragraphs above.

Applicant's arguments filed Sep. 27, 2007 have been fully considered but they are not persuasive. The figure shown at the top of page 18 of the response is incorrect as discussed above. As to claims 65, it should be noted that only a portion of the V-shaped connecting bar of applicant's invention is parallel to at least a portion of the bar element that the V-shaped connecting bar engages. A portion of connecting bar 1032 of Kveen et al. is parallel to at least a portion of the bar element that connecting bar engages.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action



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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

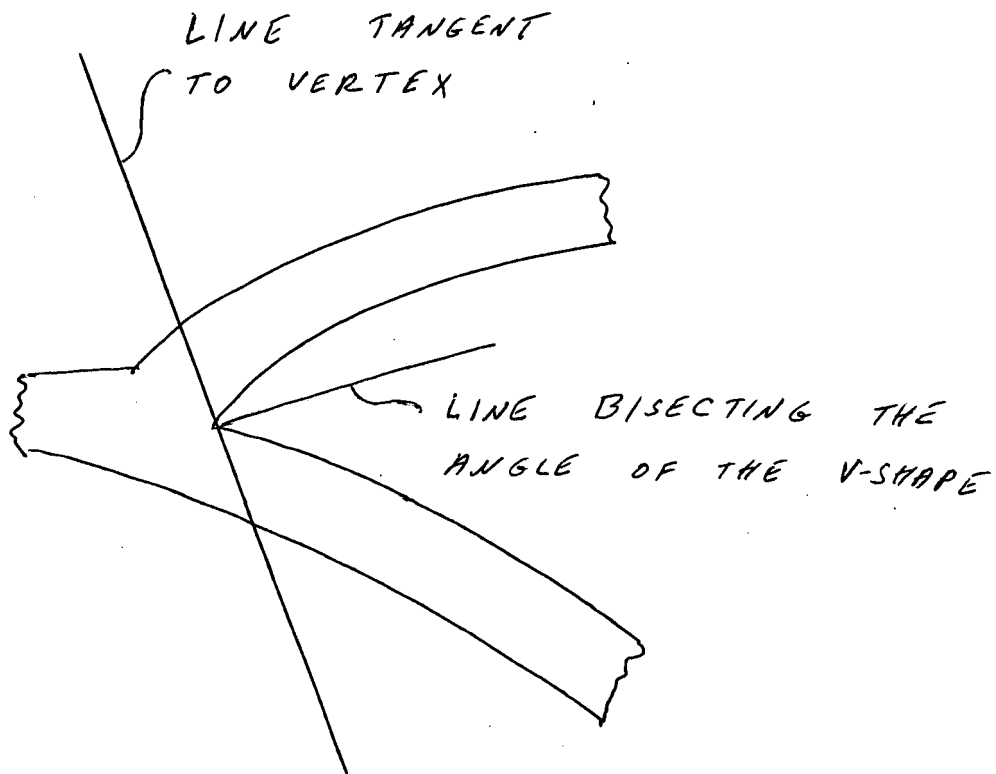
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MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731

# APPENDIX A

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APPENDIX B

